IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8219 OF 1997

with

CIVIL APPLICATION NO.2806 OF 2000

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

HAJRABEN ADAM GIRNARI & ANR.
VERSUS
STATE OF GUJARAT & ORS.

Appearance:
MR KETAN DAVE for petitioner
MR MUKESH PATEL for respondents No.1, 2 & 3
MR MS SHAH for respondents No.4 & 5

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision: 12/06/2000

C.A.V. JUDGMENT

#. Civil Application No.2806 of 2000 has not been placed on the Board. On the request of learned counsel for the petitioners, the papers of this civil application have been called. In the civil application, prayer has been made by petitioners for grant of permission to amend the special civil application as proposed therein. This proposed amendment in the pleadings has been considered. As the averments proposed to be incorporated in the special civil application by amendment thereof have been considered now this civil application stands disposed of accordingly.

#. Rule. The learned counsel for the respondents waive service of Rule on behalf of respondents.

#. The petitioners were elected as councillors of Mangrol Municipality as independent candidates from the constituency reserved for women candidates. On 29.8.97, a notice was given to the petitioners by respondent No.3 under section 38 of the Gujarat Municipalities Act, to show cause as to why action should not be taken against them under this Section with regard to the employment of their relatives as daily wagers in Mangrol Municipality. On 2.9.97, the petitioners submitted detailed reply to the aforesaid notice to the respondent No.3. On 4.9.97, the respondent No.3 passed an order under which both the petitioners were declared to be disqualified to continue as councillors of Mangrol Municipality. Against this order of respondent No.3, the petitioners preferred appeal u/s.38(4) of the Act aforesaid before the Director of Municipalities, Gujarat State, the respondent No.2 herein. Along with the appeal, the petitioners filed an application for grant of stay of the operation of the order of respondent No.2. The respondent No.2 declined to grant exparte stay. The petitioners challenged the order of respondent No.2 declining to grant exparte stay in this court by filing special civil application No.6678 of 1997. On 11.9.97, the special civil application No.6678 of 1997 came to be disposed of by this court with the observations that the Director of Municipalities is expected to take appropriate decision about the interim relief. On 12.9.97, the respondent No.2 rejected the stay application of the petitioner. That order has been challenged by petitioners in this court in special civil application No.7234 of 1997. That petition came to be disposed of on 7.10.97 with direction to respondent No.2

to hear and decide the appeal of the petitioners on or before 24th October 1997. On 22.10.97, the appeal of the petitioners was dismissed by respondent No.2. Hence this special civil application.

#. None of the respondents has filed reply to the special civil application. On 1st October, 1999, an additional affidavit has been filed by petitioners. The civil application has been filed by petitioners on 19.2.2000. In the additional affidavit, the petitioners have stated that several other persons were engaged as Rojamdar by Mangrol Municipality. The list of those persons who were engaged as Rojamdar by Mangrol Municipality during the period, i.e. from 16th September 1996 to 15th September 1997 has been given. The aforesaid statement is stated to be furnished by the Chief Officer of Mangrol Municipality which has been duly signed by the Accounts Clerk as well as the Chief Officer. It is further stated in the additional affidavit that these persons as Rojamdar were appointed in the same manner in which the son of first petitioner and grand son of the second petitioner were appointed. It is stated that it is not factually correct that except the son of the first petitioner and grand son of the second petitioner, no other persons were engaged by Municipality as Rojamdar. In this additional affidavit, it is further stated that there are no allegations in the show cause notice that except the son of the first petitioner and the grand son of the second petitioner, no other persons were engaged as Rojamdar. In the absence of such allegation, what the petitioners state in this additional affidavit, that in reply to the show cause notice, the petitioners could not produce these statements before the Collector as well as before the Director of Municipalities. This affidavit has been filed by petitioners as the authorities below have observed that the son of petitioner No.1 and grand son of petitioner No.2 were the only persons appointed as Rojamdar during the relevant period in Mangrol Municipality. If we go by the averments made in the civil application, it is clearly borne out therefrom that these very averments made in the additional affidavit have been incorporated therein to be brought on record by way of amendment in the special civil application. In view of this additional affidavit, otherwise also, I fail to see any justification in the approach of the petitioners to file this civil application. Once additional affidavit is filed to bring on record all these facts, same are to be considered for which this civil application was not necessary. Be that as it may.

#. The learned counsel for the petitioners contended that the petitioners have no financial interest in these appointments and as such, the action of the respondent No.3 declaring them disqualified to continue as councillors of Mangrol Municipality is wholly without jurisdiction. In support of this contention, the learned counsel for the petitioners placed reliance on the decision of this court in the case of Chandrikaben Kapilbhai Joshi v. Collector, Bhavnagar District & Ors., reported in 1996(3) GLR 477. Carrying this contention further, the learned counsel for the petitioners submits that it is not the case of respondents that the petitioners have used their position or assailed any influence to get their son and grand son appointed as daily wagers in the Mangrol Municipality. Mr.Dave submits that the son of petitioner No.1 and grand son of petitioner No.2 are residing separately from them. It has next been contended that these two persons have been given appointment as Rojamdar in the Municipality as it has been done in the case of other persons and it could not have been taken to be a ground to declare them disqualified to hold the office of the councillor. Lastly, it is contended that subsequently the services of these two persons were discontinued and as such, the petitioners could not have been penalized to the extent of their virtual removal from the office of the councillor.

#. Mr.Mukesh Patel, learned counsel for respondents No.1, 2 and 3 contended that the Municipality is a constitutional authority. It being a constitutional authority, it is the utmost duty of its councillors as well as officers and employees to see that in the appointments of the employees, the constitutional provisions or rules framed for making these appointments are scrupulously followed. Mr.Patel submits that merely because some other persons were also appointed it cannot be taken that for appointment of these two persons, which are illegal appointments, these petitioners could not have been declared to be disqualified to hold the office of the councillor. Mr.Mukesh Patel, further submits that though it is not very specifically stated that these petitioners have asserted their influence to get these persons appointed as daily wagers, but these are the matters for which necessary inference can be drawn. Mr.Patel vehemently contended that in the municipalities these type of back-door entries are being made at the instance of councillors. The very fact that these two persons have been appointed in total disregard of the constitutional provisions as well as relevant service rules of the municipalities and these petitioners had

never objected these appointments the authorities have rightly taken it to be a case where these councillors should not be allowed to continue. Other persons were appointed and further merely because the authorities have observed that these are only two persons who have been appointed as Rojamdar, the orders passed by these authorities may not be taken to be illegal. Substance of the matter has to be considered and not the technicalities. Even if in the show cause notice all the necessary details were not given, but the fact that the petitioners admitted the position that son of petitioner No.1 and grand son of petitioner No.2 have been appointed as Rojamdar it is immaterial. The petitioners being elected persons they have to abide by their duties and should have come up with clean hands before this court. Once it is found that their son and grand son have been appointed dehors the provisions of service rules they should have voluntarily resigned from the offices rather than to continue with this litigation and to stick to the office.

#. Mr.Shah, learned counsel for respondents No.4 and 5 has supported the orders passed by the respondents.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The petitioners have admitted that their son and grand son have been given appointments as Rojamdar in Mangrol Municipality. From the order of respondent No.2, I find that the son of petitioner No.1 was given appointment in the month of October 1996 and he continued in service till the matter has been decided by respondent No.2. By the time of July 1997, towards the salary, these persons have been paid Rs.11,381/=. So far as the grand son of respondent No.2 is concerned, he was given appointment in the month of Febraury 1997 and he continued in service till the matter was decided by respondent No.2. The Mangrol Municipality is a constitutional authority. It is the duty of its officers as well as of the councillors to see that its actions, orders, resolutions, etc. are strictly in compliance with the constitutional provisions, the Act and the Rules framed under the Act as well as its own rules, bye-laws etc.

##. I find sufficient merits in the contention of Mr.Mukesh Patel that in the Municipalities in the State, there is rule to give appointments to the favorites and to near kith and kin of the councillors dehors the constitutional provisions as well as rules, bye-laws etc.

Illegal appointments or back-door appointments is rule and seldom constitutional provisions and rules of appointments are being followed. In this way, the municipalities are heavily financially burdened to pay salaries to these back-door entrants or the persons who have been inducted in services illegally. It is true that many other appointments have been made similarly. But only on this ground, it is too difficult to find any fault in the orders passed by the authorities. Even if it is taken that son of petitioner No.1 and grand son of petitioner No.2 were living separately, I fail to see how it makes any difference or any material effect on the merits of the matter. These are the points which can conveniently be taken as the same favour the petitioners but these points cannot be taken into consideration for the reason that the petitioners are the councillors and being councillors they have to know their duties towards people who have elected them as their representatives and they owe also duty to see what Constitutional provisions as well as what the Acts provide, rules framed thereunder provide and the municipalities' own rules and byelaws etc. are strictly complied with before any person is given employment. It is not the case of petitioners that from the very day on which these two persons were appointed, they were not knowing about their appointments. It is very convenient to state that they have not asserted any influence or they have not got these persons appointed in Mangrol Municipality. If we go by realities of things which are prevailing in our country, it was the only consideration to give them appointments that their mother and grand mother were councillors. In our country these are the only persons who are getting appointments by this back door entries, then they continue in service for years together and then they get their confirmation or regularization either by approaching the Labour Court or to this Court. Cases after cases are there where such appointees are coming up before this court for regularization and in many cases courts are protecting them. So it becomes a system or channel to get their own persons appointed through back door in the services of the constitutional authorities like municipalities. The petitioners, if they were not influential as what it is projected or they had no interest whatsoever in the appointments or they have not asserted any influence in matter, the first and foremost action by them should have been to object these appointments as being unconstitutional or dehors the service rules. The very fact that they have never objected for these appointments goes to show or an inference can be drawn that these appointments have been got by them in Mangrol Municipality of their son and

grand-son. Notice have been received by petitioners from respondent u/s.38 of the Act, and immediately, if they would have been bonafide councillors, as what the learned counsel for the petitioners is projecting, they could have asked the Municipality to terminate their services and they should have come up with the case before the Municipality as to why these persons have been appointed dehors the constitutional provisions as well as service rules. They should have taken action against the Chief Officer, the person who has given appointments to these persons. They should have asked the Municipality to call special meeting of the Municipality to consider these illegal and unconstitutional action of the Chief Officer. They should have recommended to the State Government to remove this officer from services as he is acting dehors the provisions of the Constitution as well as provisions of the Act and Rules framed thereunder. In case it would have been done by these persons, then certainly what the learned counsel for the petitioners is contended could have been accepted. But the very fact that they allowed to continue these persons in service without any objection and going on filing cases for their continuation as councillors goes to show that they are real instrumentality in getting of these illegal, unconstitutional back-door appointments of their own kith and kin in the services of the Municipality. Sitting under Article 226/ 227 of the Constitution, this court will not protect such councillors who themselves are responsible for appointments of their own kith and kin contrary to and dehors the provisions of the Constitution or relevant rules. The fact that these two persons are no more in service is hardly of any substance. The petitioners being councillors of the constitutional authority, they owe duty which they certainly failed to discharge in this case and rightly action has been taken against them and they are declared disqualified to continue as councillors. They have to show utmost respect to the constitutional provisions, their duties to the people as well as to see that in the Municipality no illegal appointments are being made. Contrary to it they have permitted the illegal and unconstitutional appointments of their own persons, namely, son and grand son, and now they want to themselves to be continued as councillors. This court is there to see that constitutional provisions are followed, can not permit such persons to continue as councillors.

##. The decision on which reliance has been placed by learned counsel for the petitioners is hardly of any help to him in this case. Each case has to be decided on its own facts and that what this court is doing in this case.

That was the case of contract whereas it is a case of illegal appointment of none other than the son and grand son of the petitioners.

##. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief earlier granted stands vacated. The petitioners are directed to pay Rs.300/= as costs of this petitioner to the respondent-State of Gujarat. So far as Municipality is concerned, it is equally responsible for all these unconstitutional or illegal appointments as its own members and Chief Officer have permitted these appointments without any objection and it cannot be awarded any costs.

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(sunil)